IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1178 OF 2004

IN

A.O. 869 of 2004

Pratap Baburao Ahuja .. Appellant

vs.

State of Maharashtra & Ors. .. Respondent.

Shri H.V.kode, Advocate for the Appellant.

Mrs. Mulekar, AGP, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. Rule. Respondent Nos.1 to 3 waives service. Heard learned Counsel appearing for the parties. In public auction held in January 2002 a right was conferred on the Appellant to excavate sand from the designated spot from village Krishna. Under the terms and conditions of the agreement the Appellant was required to pay 1/4th of the amount of bid offered at the time of auction and remaining amount was to be deposited

before taking possession of the spots allotted to the Appellant. There is no dispute about payment of 1/4th amount, but the dispute is about non payment of the balance amount of Rs.26,36,000/- which is admittedly not paid by the Appellant to the Respondent No.1. The Respondent No.1 is trying to take coercive action against the Appellant for non payment of the said amount. The case of the Appellant is that for various reasons beyond the control of the Appellant, requisite quantity of sand could not be excavated.

2. The Appellant was, prima facie, liable to pay the said amount under the terms and conditions agreed by and between the parties. The Application made by the Appellant for temporary injunction has been rejected. Though the appeal is admitted for final hearing, the Appellant is not entitled to unconditional interim relief. The amount which is claimed by the Respondent No.1 will have to be secured.

3. Hence I pass the following order.

Till the disposal of the appeal, the Respondent Nos. 1 to 3 are restrained from taking any coercive action against the Appellant for recovery of sum of Rs.27,36,000/- subject to condition of the Appellant furnishing security in the sum of Rs.27,36,000/- to the satisfaction of the trial Court within the period of 6 weeks from today. If the security is not furnished, interim relief granted will automatically stand vacated.

It is made clear that this order does not prevent the State Government from filing a Civil Suit for recovery of the said amount alongwith interest against the Appellant.

Civil Application is disposed of in above terms with no order as to costs.

(A.S.Oka, J.)